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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1962

No. 17

WALTER HUMPHREY, Etc., Et Al., - Petitioners,

versus

C. W. MOORE, Etc., Et Al.,
GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL UNION No. 89, and
DEALERS TRANSPORT COMPANY, - Respondents.

AND

No. 18

GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL UNION No. 89, - Petitioner,

versus

C. W. MOORE, Et Al., - - - - Respondents.

RESPONSE.

BROWN, SLEDD & McCANN,
JOHN Y. BROWN,
601 Security Trust Bldg.,
Lexington, Kentucky,
Counsel for Respondents.

WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1962

No. 407

WALTER HUMPHREY, Etc., Et Al., - *Petitioners.*

v.

C. W. MOORE, Etc., Et Al.,
GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL UNION No. 89, and
DEALERS TRANSPORT COMPANY, - - *Respondents.*

AND

No. 408

GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL UNION No. 89, - *Petitioner,*

v.

C. W. MOORE, ET AL., - - - *Respondents.*

RESPONSE.

SECTION I.

Statement of Facts.

For his response to petitions 407 and 408, pending in this court, C. W. Moore, individually, and for and on behalf of members of the class, state that the facts in this case are set out in the petitions and in the opinion of the Kentucky Court of Appeals. For brevity's

sake, the essential fact involved is the right of the employees of Dealers to retain their jobs after Dealers has taken over certain secondary runs abandoned by E. & L. Company. The petitioners' statement of fact is misleading concerning the acquisition of these secondary runs by Dealers. They have taken a quote from the testimony of Mr. Snites out of context (page 7 of Walter Humphrey's petition). Also the petitioners have failed to present any of the facts concerning action on the part of Mr. Priddy and the members of Local 89 which denied to these respondents a fair hearing before the full committee and showed discrimination by the union. These matters will be discussed later in this brief.

SECTION II.

The Issues.

This is a suit by a group of employees against their union and their employer for injunctive relief to protect the rights of the individual employees under an existing, effective, binding collective bargaining agreement.

The real defendant is Local #89, The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as "Local #89". While both Dealers Transport Co., hereinafter referred to as "Dealers" and E. & L. Transport Co., hereinafter referred to as "E. & L." are parties defendant to this suit, they are not actual defendants. This is, therefore, the question of the

rights of a group of the members of a union to the benefits of the collective bargaining agreement, where that group has been unfairly treated by the union and have lost their rights under the contract. The Kentucky Court of Appeals found that these respondents had lost their rights under the existing contract by reason of the arbitrary ruling made by the union at the so-called Joint Conference Committee meeting in Detroit, Michigan.

The petitions have unduly complicated the issues. They have quoted extensively from a number of cases and have quoted rules of law but have failed to apply those rules of law to the issues herein involved. Accordingly, we shall present the issues without attempting to argue the general principles of law set out in petitioners' application.

The first issue is whether the state court had jurisdiction. It is well settled that the state courts have jurisdiction where enforcement of a contractual right is the issue. The recent case of Doyle Smith v. Evening News Association, #13 on the October term of this court, decided December 10, 1962, 31 Law Week, 4041 (other citations not now available) holds that a state court has jurisdiction of an action by an employee against the employer for damages for violation of collective bargaining agreement. In that case, it was also admitted that there was an unfair labor practice committed by the employer which would give the National Labor Relations Board jurisdiction. This Court held that since there is also a contractual right involved, the individual employee has a right to main-

tain his action for damages in the state court, and the mere fact that there is jurisdiction in both bodies does not deprive the employee of this right. The court stated:

> "The authority of the Board to deal with an unfair labor practice which also violates the collective bargaining contract is not displaced by section 301, but it is not exclusive, and does not destroy the jurisdiction of the courts in suits under section 301."

Since there was no unfair labor practice involved in the present litigation, the case has not been pre-empted to federal jurisdiction even before the Doyle Smith case. But, certainly in view of that decision and the other recent decisions cited therein, the state court of Kentucky did have jurisdiction to try and hear the present case.

The case of International Association of Machinists v. Marcos Gonzales, 356 U. S. 617, 620, 2 Law Ed. 2d 1018, 78 Sup. Ct. 923, held that federal legislation had not pre-empted the field where breach of contract governing the relations between the employee and the union is the issue before the state court. The court stated:

> "In either case, the potential conflict is too contingent, too remotely related to the public interest expressed in the Taft-Hartley Act, to justify depriving state courts of jurisdiction to vindicate the personal rights of an ousted union member. This is emphasized by the fact that the subject

matter of the litigation in the present case, as the parties in the court conceived it, was the breach of a contract governing the relations between respondent and his unions."

In Association v. Westinghouse Electric Corp. Company, 348 U. S. 437, 460, 99 L. Ed. 510, 75 Sup. Ct. 488, the court stated:

> "The employees have always been able to enforce *their individual* rights in the state courts. They have not been hampered by the rules governing unincorporated associations. To this extent, the collective bargaining contract has always been 'enforceable'."

Textile Workers Union v. Lincoln Mills of Alabama, 77 Sup. Ct. 912, 353 U. S. 448, 453, 1 Law Ed. 972;

> "Once parties have made a collective bargaining contract, the enforcement of that contract should be left to the usual processes of law and not to the National Labor Relations Board."

It is, therefore, apparent that the state courts have jurisdiction of this case.

The second issue is whether the court had the power to set aside the arbitration ruling made by the Joint Conference Committee. It seems apparent that if the Kentucky court has the power to interpret and decide the rights of C. W. Moore and others to the collective bargaining contract in existence, that they have the power to enforce their rights under that contract by means of the injunction which set aside the unfair, unjust decision of the Joint Committee.

The law in Kentucky with regard to setting aside the decision of an arbitration board, or committee, or arbitrator is established. It can and should be done if there is gross mistake of law or fact constituting evidence of misconduct amounting to fraud or undue partiality. Smith, *et al.* v. Hillerich and Bradsby Co., Ky. 1952, 253 S. W. 2d 629. In Normal v. Southern Bell Telephone & Telegraph Co., 322 S. W. 2d 95, Ky. 1959, the court in discussing the ruling of an arbitration committee stated:

> ". . . it is to be expected any court would set aside and correct any ruling which refuses a pension for some reason that is not founded on justice."

The issue, therefore, under Kentucky law, is whether the decision of the Joint Conference Committee is founded on justice, or whether there is a gross mistake of law or fact constituting evidence of fraud or undue partiality. If either of these conditions exist, the court should set aside the decision of the arbitration committee.

It is the duty of the chosen representative or union to bargain with the employer for and on behalf of the employees in that the said union cannot discriminate against any particular group of union membership or activity. Conley v. Gibson, 355 U. S. 41, 46, 2 Law Ed. 2d 80, 78 Sup. Ct. 99, held:

> "A contract may be fair and impartial on its face yet administered in such a way, with the

active or tacit consent of the union, as to be flagrantly discriminatory against some members of the bargaining unit."

Ford Motor Company v. Huffman, 345 U. S. 330, 336:

"The National Labor Relations Act as passed in 1935, as amended in 1947, exemplifies the faith of Congress in free collective bargaining between employers and their employees when conducted by freely and fairly chosen representatives of appropriate units of employees. That the authority of bargaining representatives, however, is not absolute is recognized in Steele v. L & N Railroad Co., 323 U. S. 192, 198, 199, 89 Law Ed. 173, 65 Sup. Ct. 226, in connection with comparable provisions of the Railway Labor Act. Their statutory obligation to represent all members of an appropriate unit requires them to make an honest effort to serve the interests of all those members, without hostility to any."

In the case of United Steel Workers of America v. Enterprise Wheel and Car Corporation, 363 U. S. 593, 597, 4 Law Ed. 2d 1424, 80 Sup. Ct. 1358, the court discussed the powers and authority of an arbitrator.

"When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of the problem . . . Nevertheless, an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet

his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award."

This case, therefore, presents no questions which have not heretofore been considered by this honorable court, nor does it present any questions which will adversely affect the collective bargaining processes. It rather involves the interpretation of a contract and the secondary question of whether the Joint Conference Committee, failed to properly interpret the contract. The Kentucky Court of Appeals found the Joint Conference Committee ruling to be unjust and granted the injunction to these respondents. This court should not involve itself with the question of interpretation of this contract. However, we will discuss briefly the reasons that the decision of the Kentucky Court of Appeals is correct and that the decision of the Joint Conference Committee was, in fact, unjust, unfair and discriminatory as to these respondents.

The record discloses that Dealers did not buy any of the assets of E. & L.; that there was never any discussion of Dealers buying E. & L.; that there was never any agreement or indication that employees of E. & L. were to become employees of Dealers until after this grievance was filed. The only so-called merger or "Absorption of business" was that Dealers took over certain secondary runs formerly held by E. & L. in order to geographically consolidate Dealers' activities. Under these circumstances, it is difficult to

believe that Article IV, Section 5 is applicable as is contended by the petitioners. If it was not applicable there was no question to have been arbitrated under the agreement. The question of whether an issue is to be arbitrated under an agreement is a judicial question for the courts to determine. Harbison-Walker Refrac. Co. v. United Brick & C Works, Ky. 1960, 339 S. W. 2d 933; see also 24 ALR 2d at page 757, *et seq.* There was no issue to be arbitrated under Article IV, Section 5 of the Truckaway Agreement unless there was an absorption of business within the meaning of the contract. The facts do not justify a finding that Dealers absorbed the business of E. & L. For this reason there was no issue to be arbitrated by the Joint Conference Committee and its decision cannot stand.

Even if we assume Dealers did absorb the business of E. & L. and that this question was to be arbitrated under Article IV, Section 5 of the Truckaway agreement, the court is still confronted with the question of whether the decision reached by the Joint Conference Committee is so unjust, unreasonable and unfair as to prevent its enforcement. The decision reached is contrary to the explicit provisions of the Truckaway contract and it discriminates against a group, the respondents in this case, who were a group of employees of Dealers and members of Local #89. They were entitled to be fairly and honestly represented by their collective bargaining agent. Accordingly, it is the position of these respondents that the decision reached by the Joint Conference Committee was arbitrary, unreasonable and unjust because it violates the

explicit provisions of the contract, and further that the decision of the Joint Conference Committee cannot stand because these respondents were denied their right to be fairly represented by Local #89. This contention is based upon the fact that they were continuously assured of a favorable decision up until the time of the hearing at Detroit, and all of the circumstances indicate their rights were not protected by their collective bargaining agent.

Article IV, Section 1, of the Truckaway contract specifically provides:

> "Terminal seniority shall prevail at all times except as provided for in Article IV, Section 6, Sub-section B-2."

There was a supplemental agreement to the original contract in effect which provided:

> "The Louisville domiciled employees of the employer (employer being Dealers), shall have exclusive rights to all the work originating at the Louisville terminal."

Article IV, Section 6, Sub-section B-2, provides that when a branch terminal divisional operation is closed or partially closed, the employees at the partially closed branch terminal shall have "the right to transfer to the branch terminal divisional operation into which the work was transferred, if regular work is there available. Such employee, however, shall go to the bottom of the seniority board and shall have the right of job selection only in accordance with his seniority at such

terminal." It is apparent that this Truckaway Agreement contract intends to preserve the rights of an employee to continue working at the terminal which is his regular and fixed place of employment. In this case, respondents were regular employees of Dealers who were employed at the terminal in Louisville. Therefore, under this contract, they are the terminal employees whose rights are to be protected. This fact and the obvious intent of the contract was completely ignored by the Joint Conference Committee when it decided to "sandwich in" the employees of Dealers with those of E. & L.

This same contract was in effect with the employees of E. & L. As the Kentucky Court of Appeals pointed out that should not make any difference to the rights of Dealers under its contract since it was a contract intended to protect the rights of Dealers first and foremost which is being decided in this controversy. But, the Joint Conference Committee by its decision is obviously giving to the employees of E. & L. rights to which they were not entitled under their contract, and this to the detriment of the respondents. The contract specifically provides under Article IV, Section 6, as above quoted that when a branch or terminal or division or operation is closed or partially closed, which is exactly the situation when E. & L. gave its secondary runs to Dealers, that the employees of such partially closed branch or division may go over to the other branch and seek regular employment, but that they do so only on condition that they go to the bottom of the seniority board. Therefore, if the employees of E. & L.

go to work for Dealers under the provisions of this contract, then they specifically go to the bottom of the seniority board. For the Joint Conference Committee to give the employees of E. & L. rights to which they were not entitled under their contract and take away rights to which employees of Dealers were entitled is obviously unjust, unfair and discriminatory.

The employees of E. & L. who filed this grievance were not employees of Dealers at the time the grievances were filed and had no rights under the contract and so far as we can determine had no right to file this grievance. Regardless of this, the grievance was considered and after being deadlocked at the Louisville hearing, it was referred to the Joint Conference Committee at Detroit and the decision was rendered against the employees of Dealers. These respondents who were the original employees of Dealers were continuously assured by Leslie Aterbury and Paul Priddy, the president and assistant of Local 89 at Louisville, that they had nothing to worry about, that the grievance would be denied, that they would not lose their jobs and that the seniority acquired by employees of Dealers would prevail. These facts are proven by the testimony of the respondents as well as by the testimony of Leslie Aterbury. Now the representatives of Local 89 contend that when they got to Detroit they gained other information which caused them to change their opinion. However, David E. Stovall, personnel and safety director for Dealers, testified that Paul Priddy knew even before he left for Detroit that Hoffa, International president, was thinking that em-

ployees of both concerns would have to be sandwiched in and that Paul Priddy had told Stovall that this was to be the case. This obviously is true since it evidences the power of the union if it can make the seniority of employees cut horizontally across lines of more than one employer. Regardless of these facts, it was only 15 minutes before the actual decision was rendered that these respondents, who were not qualified to represent themselves, were advised that they had better get busy and protect their rights. Obviously they had no representation at the hearing when the persons upon whom they were relying, that is the president and vice-president of Local 89 suddenly told them that they were going to be on the other side of the fence. Under these facts, can it possibly be said that the collective bargaining agent for the employees of Dealers fairly and honestly represented their rights. In fact, isn't it true that such circumstances conclusively show that the rights of the employees of Dealers under the contract were ignored and that they were discriminated against by their own collective bargaining agent.

SECTION III.

The Conclusion.

The decision of the Joint Conference Committee was arbitrary, unreasonable, unjust and denied to these respondents their rights under a valid, existing, collective bargaining agreement known as the Automobile Carrier Truckaway Agreement. The decision was reached in an unfair, arbitrary manner which denied to these respondents their right to fair and honest representation by their collective bargaining agent, Local 89.

The state courts of Kentucky had jurisdiction to try and render a decision in this case since it involved the interpretation of an existing contract. Kentucky courts now have and have always had jurisdiction to try and render a decision in a case involving contractual rights of residents of Kentucky. Such rights were not taken away or pre-empted by federal legislation under the National Labor Relations Act as amended.

There is no federal question of substance which would justify this court granting certiorari to hear the present case. This is not a case, as contended by the petitioners, where disgruntled employees are making a mirage of the bargaining process. The facts show, and the Kentucky court found, that there was discrimination and an unfair and unjust decision reached by the Joint Conference Committee. The Kentucky courts have done nothing more than they have always

had the right to do and there is no question presented to this court which should again be considered.

We respectfully submit that the petitions for Writ of Certiorari should be denied.

Respectfully submitted,

BROWN, SLEDD & MCCANN,
JOHN Y. BROWN,
601 Security Trust Bldg.,
Lexington, Kentucky,
Counsel for Respondents.